IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6573 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAHIODHUSEN ALLAUDDIN HARIYANI - Petitioner(s)

Versus

RAJKUMAR KIMMATMAL DHAMEJANI - Respondent(s)

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Appearance :
MR SK BUKHARI for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.
MR ASHISH M DAGLI for Respondent No(s).: 1.
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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 21/07/2005

ORAL JUDGMENT

1.By filing instant petition under Article 227 of the

Constitution of India, the petitioner seeks to challenge the order dated 26.03.2004 rendered in Civil Revision Application No. 8 of 2003 by the learned Joint District Judge, Bhavnagar by which the revision application filed by the respondent – tenant came to be allowed and thereby order dated 23.09.2003 recorded below application 44 in Regular Civil Suit No. 139 of 2000 by the learned Civil Judge (JD), Palitana rejecting the application filed by the respondent under Order 6 Rule 17 of the Code of Civil Procedure ('the Code' for short), seeking amendment in the written statement came to be set aside and the application ex.44 seeking amendment in the written statement is allowed.

2. The petitioner is the owner of building situated near Bhairavnath Mandir in Palitana Town. Room No.7 of the said building has been let out to the respondent w.e.f. 11.4.1995 by executing a rent note dated 11.4.1995 signed by both the parties. One of the conditions of the said Rent Note is that w.e.f. 15.4.1995, the petitioner – landlord has a right to increase the rent by 30% at the end of every two years. Accordingly, till August, 2000, the Respondent-tenant has paid the increased rent as per the terms of the Rent Note.

3. The petitioner filed a suit being Regular Civil Suit No. 5 of 1999 in the Court of the learned Civil Judge (JD), Palitana on the ground of non-payment of arrears of rent and the said suit came to be disposed of in Lok Adalat by compromise on 14.03.1999 in which the respondent had agreed to pay up the entire arrears of rent. According to the petitioner, inspite of the fact that the respondent agreed to make the payment of

entire arrears of rent as agreed upon, the respondent stopped making payment of rent w.e.f. March, 2000. Therefore, the petitioner issued a registered notice dated 9.9.2000 demanding arrears of rent of Rs.14,196/- at the rate of Rs.2366/- per month . However the said notice was returned unserved with the postal remark 'Not Available'. Thereafter the petitioner issued same demand notice by registered post AD dated 6.10.2000. The same has neither been replied by the respondent nor the respondent field any application for fixation of the standard rent within one month from the date of receipt of notice as contemplated under Section 11(3) of the Bombay Rent Act, Hotel and Lodging House Rates Control Act, 1947 ('the Bombay Rent Act' for short).

4. The petitioner thereafter filed Regular Civil Suit No. 139 of 2000 in the Court of the learned Civil Judge (JD), Palitana praying for decree of eviction against the respondent on the ground of arrears of rent as contemplated under Section 12(3)(a) of the Bombay Rent Act. After service of the summons, respondent did not care to file written statement and therefore the learned Judge was pleased to close the defence of the Respondent. Thereafter, after more than one year, the Respondent submitted application on 14.3.2002 requesting the learned Judge to allow him to file written statement. Accordingly, the learned Judge allowed the respondent to file the written statement. The petitioner, thereafter filed one application exh.25 on 31.7.2002 mentioning therein calculation as to arrears of rent. However the learned trial Judge, by order dated 12.9.2002 dismissed the application exh.25. The petitioner also filed application exh.31 praying to

close the defence of the respondent as the respondent has not deposited the arrears of rent. The said application also came to be dismissed by the learned Judge as per order dated 5.3.2000. Respondent thereafter filed application exh.32 requesting the learned trial Judge to re-frame the issues and accordingly the learned trial Judge re-framed the issue and thereby issue No.7 was added. The respondent thereafter filed application exh.44 under Order 6 Rule 17 of the Code seeking amendment in the written statement. The said application has been rejected by the learned trial Judge. Aggrieved thereby the respondent preferred Civil Revision Application No. 8 of 2003 before the District Court at Bhavnagar. The learned Joint District Judge, Bhavnagar who heard the revision application allowed the same and thereby order below application exh.44 recorded by the learned trial Judge has been set aside and thereby application exh.44 filed by the respondent seeking amendment has been allowed which has given rise to this revision application at the instance of the original land lord.

5. Mr. S.K.Bhukari, learned advocate of the petitioner, has contended that the learned Joint District Judge has committed jurisdictional error in allowing the revision application. According to him, the suit filed by the petitioner-landlord against the respondent-tenant squarely covered by Section 12(3)(a) of the Bombay Rent Act as the respondent has not paid arrears of rent as demanded in the Notice, within a period of one month nor he has raised dispute with regard to the standard rent as contemplated under Section 11 of the Bombay Rent Act. Therefore by the proposed amendment whole

nature of the suit would be changed and therefore the learned trial Court has rightly rejected the application. However, the learned Joint District Judge has allowed the application de-hors the provisions contained in the Bombay Rent Act. He therefore urged that the impugned order passed by the learned Joint District Judge deserves to be quashed and set aside by allowing this petition. He, therefore urged to allow this petition.

6. Mr. Ashish Dagli, learned advocate of the respondent, has supported the order passed by the learned Joint District Judge. According to him, no infirmity or illegality, much less jurisdictional error has been committed by the learned Joint District Judge in passing the impugned order. He, therefore, urged that this petition may be dismissed.

7. This Court has considered the submissions advanced by the learned advocates appearing for the parties, perused the impugned judgement and order rendered by the learned Joint District Judge in Civil Revision Application No. 8 of 2003.

8. There is no manner of doubt that so far as the provisions contained under the Bombay Rent Act is concerned, dispute with regard to the standard rent must be raised within a period of one month of the service of the notice. According to the tenant, if the rent is excessive than standard rent, he can also file application under Section 11(3) of the Bombay Rent Act by praying to the Court to fix the standard rent. So far as the protection available to the tenant against the decree of eviction is concerned, the tenant has to make out his case under Section 12(3)(b) of the Bombay

Rent Act. For getting protection under Section 12(3)(a) of the Bombay Rent Act he has to tender the rent as demanded by the landlord in the notice or he has to file an application under Section 11(b) of the Bombay Rent Act, praying to determine the standard rent. So far as the statutory provisions contained under the Bombay Rent Act is concerned, it is a matter of appreciation of evidence. Therefore, according to this Court, by the proposed amendment, no prejudice is going to be caused to the landlord. After proposed amendment, the Court has to re-frame the issues and thereafter to give opportunity of leading evidence to both the parties.

9. In the case of Raghu Thilak D. John v/s S.Rayappan and others, AIR 2001 SC 699, the Supreme Court in para 6 of the judgement has observed as under:

> *"6. If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in para 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for."*

10. Applying the principle laid down by the Supreme Court in above referred to judgement to the facts of the present case it would be always open for the landlord to raise contention that the suit filed by the landlord is covered under Section 12(3)(a) of the Bombay Rent Act and the Court has to decide the said contention after giving opportunity of hearing to both the parties

and in accordance with law.

11.In aforesaid view of the matter, according to this Court this petition lacks merit, deserves to be rejected.

12.For the foregoing reasons petition fails and accordingly it is rejected with no order as to costs. Rule is discharged. Interim relief granted earlier stand vacated.

13.It is needless to say that this Court has not examined the merits of the contention whether the case of the landlord falls under Section 12(3)(a) or 12(3)(b)of the Bombay Rent Act. It would be open for the learned trial Judge to examine the averments made in the plaint as well as written statement and decide the issue raised in the suit in accordance with law.

(A.M.Kapadia,J)

Jayanti*